CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON, *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Wednesday Morning Session
April 23, 2003
9:50 a.m.
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Wednesday Morning Session
April 23, 2003
9:50 a.m.
* * * * *
P R O C E E D I N G S
* * * * *
(In open court with a jury present:)
THE COURT:
Good morning. Have a seat, have a seat.
Defense counsel ready to continue with the presentation of evidence?
MR. SHOLES:
Yes, Your Honor.
THE COURT:
Mr. Sholes, your witness?
MR. SHOLES:
Yes. Your Honor, at this time we will call Professor Robert Norell.
Good morning, ladies and gentlemen.
THE COURT:
Just a moment, Mr. Sholes. I need to swear the witness. Sholes.
-- -- --
ROBERT J. NORRELL, Ph.D.
being first duly sworn by the Court, testifies and says as follows:
-- -- --
DIRECT EXAMINATION
BY MR. SHOLES:
Q. Sir, would you introduce yourself to the jury?

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A. I'm Jeff Norell, I'm from Knoxville, Tennessee.
And I grew up in Hazel Green, Alabama, which is a farming community near Huntsville, Alabama.
Q. Why are you here?
A. I'm here to testify about the public's awareness, historical awareness of the issues of smoking and health in the United States and in the state of Louisiana.
Q. Well, first, let's talk about what makes you qualified to talk about that. What do you do for a living?
A. I teach history at the University of Tennessee. I teach undergraduates and graduate students American history.
Q. How long have you been there?
A. I have been at the University of Tennessee for five years.
Q. Well, before you were teaching at Tennessee, what were you doing?
A. I taught history, American history at the University of Alabama in Tuscaloosa, Alabama, for twelve years.
And before that I taught seven years American history at Birmingham Southern College in Birmingham, Alabama.
Q. Where were you before then?
A. I was in graduate school at the University of Virginia.
I spent also a year on fellowships at the University of Cambridge in England.
Q. University of Virginia. Now, I remember, I

think I heard yesterday Mr. Herman said something about the people from the University of Virginia being very smart. Is that true?
A. Well, the ones who taught me were.
Q. Okay.
A. I can't say that for all their students, but --
Q. Well, let's talk about what makes you qualified to teach history. What degrees do you have?
A. I have the undergraduate or Bachelor's degree in history, the Master's degree in history, and the Ph.D. in history, all from the University of Virginia.
Q. Well, what did you have to do to get a Ph.D., Doctor?
A. To get a Ph.D. in history, I had to take a series of courses for three years, lots of courses where I read lots of books and wrote papers.
And at the end of that three-year period I had to sit for a qualifying examination to make sure I learned enough to be a doctor of philosophy and history.
And then after I took the -- passed the qualifying test, the examination, I wrote a doctoral dissertation, which is like a book-length study.
Q. What was your dissertation about?
A. My dissertation was a study of the civil rights movement in Tuskegee, Alabama.

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Tuskegee is the home of Tuskegee Institute, Tuskegee University now. Booker Washington and George Washington Carver, of course, were based

there.
Q. Forgive me, Doctor, but why would somebody like you be interested in a subject like that?
A. Well, I was interested in the civil rights movement because I grew up in Alabama in the 1950s and 1960s when civil rights was by far the most important issue in Alabama, and it was an issue that of course was debated and argued about all through my childhood. I didn't really understand a lot of the issues, but I knew it was the most important thing in the society in my -- in the place that I grew up in.

So when I went to college, I read history, specifically a lot of it focused on that issue. And then when I went to graduate school, I decided that that is what I wanted to do my research on was civil rights, and I did this study on Tuskegee.
Q. Do you have an area of specialization in history?
A. Yes. American history is my main, my large area of specialization.

But within American history, I do Twentieth Century, the Twentieth Century United States, and particularly race relations and civil rights.
Q. Now, Doctor, you have to work with me today. I'm a little bit under the weather. Sometimes I can't hear quite well. Could you slide that thing a little bit closer to you?
A. Sure.
Q. Thank you.

This is a relatively simple question, but I think I need to make sure that it is clear. What is

history?
A. Well, history is the study of what we remember about the past, what happened. But not only what we remember that happened, history is also the study of change over time.
Q. Now, you make it sound like it's more than just remembering names and dates.
A. Well, I think it is. Of course, it's often badly taught as only the memory of names and dates.

But I think it's important in studying history to study the big movements, the way average people lived, and to study what people thought or felt at a particular time.

So I include all of that as I study and write about history.
Q. Well, have you taught any courses that deal with tobacco and cigarettes?
A. Well, in my course -- I teach the basic first course in American history, I teach a course on southern history, and I teach graduate students in southern history and American history. And in all of those in some level or another, I talk about the importance of, for example, tobacco in the economy of the United States in the 1600s and 1700s as the most important crop in the American economy.

When I talk about American history in the

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late 1800s or 1900s, I talk a lot about or some at least about the cigarettes as a new consumer product, and I place that -- of course, the continued importance of tobacco to the southern economy in the 1800s and 1900s.
Q. Professor Norell, have you written any books?

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A. Yes, I have written several books. I mentioned the dissertation on Tuskegee; that was published as a book in 1985. I have done a couple of books on southern economic history. I have done three school textbooks on Alabama history. I have written a children's book. And I have a couple of books that I am working on now about American race relations.
Q. Well, in this, the Court would want to know also if you have written any articles?
A. Yes. I have written scholarly articles. I have written articles for encyclopedias.
Q. Have those articles been peer reviewed?
A. Yes. The scholarly articles in The Journal of American History, The Journal of Southern History and Alabama Review were peer reviewed.
Q. And have you ever served as a peer reviewer for a journal?
A. I have, for journals like The Journal of Southern History and The Journal of American History. And for a number of publishers who send me book manuscripts, they ask me to evaluate whether they should be published as books.
Q. Are the journals that you have written in and peer reviewed, are they considered to be authoritative by historians?
A. Yes, I think they are. Certainly The Journal of American History and The Journal of Southern History are typically seen as among the best and most important journals in American history.
Q. Now, Doctor, I heard you say something about you have done some writing for encyclopedias. Tell

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us a little bit about that?
A. Well, I have written a number of articles for the Encarta Encyclopedia, the CD-ROM, one of the first and widely used CD-ROM encyclopedias, mostly on American race relations.
I have written articles for the Encyclopedia Britannica including the main entry on Louisiana and a number of other southern states.
Q. Wait a minute, now. You just said you wrote the main entry for Louisiana in the Encyclopedia Britannica?
A. I did, yes.
Q. I guess that might suggest you know a little bit about Louisiana; is that right?
A. Well, I think I know something about Louisiana.
I, of course, have always taught about Louisiana in terms of teaching southern history and American history, and certainly in teaching about race relations I include a lot of things about Louisiana.
Q. Sir, have you ever testified in court before?
A. I have, yes.

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Q. Well, how many times?
A. I think about eight times.
Q. What types of cases have you testified in?
A. I testified in several voting rights cases, an employment discrimination case, economic discrimination cases, a school desegregation case, one other tobacco case, and I have working on some other voting rights cases right now.
Q. Now, are you always testifying for the

defendants?
A. No. In all of the others except for the tobacco cases, I testify for plaintiffs.
Q. And you mentioned one other tobacco case you testified in.
A. Yes.
Q. What did you talk about in that case?
A. Smoking and health, public awareness of smoking and health.
Q. The same kind of stuff you are here to talk about today?
A. Yes. And that had to do with a case in Memphis, Tennessee, or several cases in Memphis, Tennessee.
Q. Sir, have you ever been denied recognition as an expert by any court?
A. No.
Q. Well, let's talk about what you did to develop the opinions you have in this case. We want to explore with the jury what you did, the processes you went through in your research.
Did you research both national and Louisiana sources?
A. Yes. I looked at a lot of newspapers that are national newspapers like The New York Times and a lot of newspapers that are Louisiana newspapers like The Times-Picayune and The Morning Advocate in Baton Rouge.
Q. Did you prepare a demonstrative that would outline the sources you reviewed?
A. Yes.
Q. Would that help you explain to the jury the

steps you took in your research?
A. Yes, it would.
MR. SHOLES:
Your Honor, I would like permission to place on the screen DDA-1027?
MR. MURRAY:
No objection, Your Honor.
MR. SHOLES:
Move to publish, Your Honor.
THE COURT:
You may publish it.
BY MR. SHOLES:
Q. Professor Norell, take us through this and tell us a little bit about what you did to prepare for your testimony today?
A. Well, this is just a list of the various materials that I looked at.
National newspapers, that's like The New York Times.
The Louisiana and Massachusetts newspapers,

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Louisiana I already mentioned, Massachusetts because one of the class representatives had grown up in Massachusetts.

I looked at a lot of different magazines, news magazines and special interest magazines.

Educational materials, looking at school curricula and school textbooks.

Public health community materials, there really referring to a lot of material published and distributed widely in Louisiana from the American Cancer Society and the American Lung Association.

I looked at television newscasts and

documentary programs to see what the television was reporting about the smoking and health issue.

I looked at popular culture material, really here I'm talk about entertainment, music, movies, television, slang.

I examined polls and surveys, especially the polls done by national organizations like Gallup, to look at questions that they would ask about smoking and health.

I looked at religious materials. The smoking issue has of course historically been addressed by a lot of the religious denominations, and I looked to see what they had to say about smoking.

I examined the papers of Dr. Alton Ochsner, the New Orleans physician, whose papers are at the Historic New Orleans Collection in the Quarter. And I will have a lot to say about Dr. Ochsner, I think.

Government publications, these are publications from the State of Louisiana and also from various agencies of the United States government.

And then I examined some of the materials specific to the named plaintiffs, their depositions and their responses to interrogatories.

Q. Well, you mentioned at least one place you went to visit. Did you visit several places to prepare for this?

A. Well, I had been doing research on this for quite some time, and I have visited a number of places. Lots of places actually.

Q. Did you prepare a demonstrative that shows the jurors some of the archives and places you

visited to research your opinions in this case?

A. I did. I did produce one.

MR. SHOLES:

Your Honor, I would ask permission to place on the screen DDA-1045, and request permission to publish.

MR. MURRAY:

No objection.

THE COURT:

You may publish it.

BY MR. SHOLES:

Q. Professor Norell, does this list some of the places you visited in order to prepare your testimony for today?

A. I did -- it does list most of them.

Q. Explore this with us, Doctor. Tell us why you went to some of these places on the list, not

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all of them?
A. Well, the Library of Congress, of course, is the library of record for materials about the United States, has lots of, lots of materials, especially newspapers, and they have complete runs and final editions of newspapers.
I went to a lot of university libraries, the University of Michigan, the University of Alabama, Michigan State, various university archives, all of which had something of use, importance to my research.
I went to several state archives, because the state keeps records that were of importance.
And I visited several places here in Louisiana. I mentioned the Historic New Orleans

Collection because of Dr. Ochsner's papers, the LSU Library in Baton Rouge, and The Amistand Collection at Tulane, all of which had Louisiana specific material.
Q. Thank you, Doctor.
We will take that one down, Ted.
Now, sir, you said you looked at polls. Now, why would a historian be interested in looking at polls for historical significance?
A. Well, I use polls in most of my work to try to establish what people were thinking, what people were informed about. This has been very valuable in my work on race relations.
In this research on smoking and health, I have looked at a lot of polls, especially the national polls done by the Gallup organization which asked a lot of, you know, direct questions about smoking and health, and they asked those questions over the years.
And again, the polls establish, you know, what people are thinking, what they know about the issue of smoking and health just as the questions on race relations do.
Q. Well, are there different types of polls, Doctor?
A. Well, yes. You know, polls, of course, asked various questions and various kinds of questions. I looked at polls here in particular that were designed to find out what people were aware of, what kind of information they were getting or not getting.
And of course there are polls that asked for

opinion or belief. I looked at some of those polls as well.
Q. Did you look at tobacco company polls?
A. I have seen some polls that were internal polls, as they are called, polls that were done -- or proprietary polls that were done for tobacco companies for their own information.
Q. Now, sir, did you review any so-called internal tobacco company documents that might be out in the public domain?
A. Well, I examined anything that I found that was in the public domain. So if a document entered the public domain, I examined it.
Q. And I guess we need to explain. So that I'm

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clear again, by public domain, what do we mean?
A. Well, documents that reach the public, that came through the media, newspapers or television or from government reports, that the public could get to, that the public -- that came to the public in the normal ways of getting information.
Q. Are you an expert on tobacco company documents?
A. No.
Q. Then I guess you have not conducted some systematic review of tobacco company documents; is that correct?
A. No. My research focused on what the public knew, the information that was coming to the public. And I did not look at the private files of the tobacco companies.
Q. Did you find any historical significance whatsoever in the internal tobacco company documents?

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A. Well, they didn't really pertain to my research. On a different research project perhaps, but not on research of what the public was informed of.
Q. Doctor, if I would put up a bunch of tobacco company documents up on the screen and start asking you questions about them, would I be wasting my time here?
A. Well, you would have to decide about your time, Mr. Sholes.
But I'm not an expert on tobacco company documents. My expertise has been developed to know what the public, what the public was informed of through the kinds of material that everybody in the public could get their hands on.
Q. So those are not documents that have anything to do with what you are going to talk about here; is that right?
A. That's right.
Q. Now, sir, did you research tobacco company statements that were reported in the public?
A. Oh, sure. Yes.
Q. That suggests that you had to look at and review newspapers; right?
A. Newspapers.
Q. Newspaper articles?
A. Newspapers, magazines, television, government reports, all kinds of things that included statements from the tobacco companies.
Q. Sir, is there a method that is used to review and research from an historical perspective what's in articles?

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A. Well, I think so. I believe that you can read a newspaper article and see what the journalist believes is the most crucial thing, what's the main thing of the article.
My wife is a journalist. I worked for a while at a newspaper. And they have -- journalists have a kind of style or method in which they construct a story or write a story that is -- that sort of tells you what is the most important thing about -- the most important information in the article and then what is a little less important and

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so forth.
Q. Did you prepare a demonstrative that would explore with the jury what you did or how you went about analyzing those kinds of articles?
A. I did, yes.
MR. SHOLES:
Your Honor, at this time we request to place up on the screen for counsel and the Court DDA-1048, and request to publish?
MR. MURRAY:
No objection.
THE COURT:
You may publish it.
BY MR. SHOLES:
Q. Dr. Norell, would you review with us the methodology that this suggests?
A. Okay. This is what the journalists call an inverted pyramid, or this is the way they teach a young newspaper reporter how to write a story. They have been doing this for a hundred years in training

journalists.
The inverted pyramid means that the most important information is on the bottom of the pyramid, and you turn the pyramid upside-down to put the most important stuff at the top.
So the lead -- the headline is the most important thing. The headline is going to summarize what the story is about.
And then -- and the lead is the first paragraph of a newspaper story. So in a newspaper story, they put the most important information, they try to summarize it in that first paragraph.
And then they give a few more details or another explanation of it, add to it, and what's there called the elaboration of the lead. And that's the next most important layer of information.
And then you go down and, you know, there are action details, there are more and more -- there is more information, there is personal accounts sometimes added to liven a story.
And then at the end, at the very bottom, at the tip of the pyramid at the bottom, there is other information that the reporter needs to put in there for one reason or another. Perhaps to get balance in a story, to make sure that he or she has given all sides of the question.
Q. Well, Professor, this is a copy of a newspaper ad or a newspaper article. Using that one as an example, can you tell us where the significant parts of this would be based on that analysis?
A. Yes, I can talk about this.

This is a story that appeared in The Times-Picayune on June 5th, 1957. This is a story about a gigantic study that the American Cancer Society had been doing for a long time. 200,000 smokers they followed to try to find out -- to establish statistically the connection between smoking and lung cancer.
So this appeared in The Times-Picayune. And

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of course, that's the main point of the story is this big study that connects smoking and lung cancer.

Not the first story by any means. There have been a lot of stories before 1957.

As you go down, there is additional information that is added.

And then at the very bottom, of course, down where the red part is, other details, you get to the -- kind of to the other details.

And I think there it's interesting, you asked a minute ago about statements by the tobacco industry, and here in the bottom where the red line goes to, in the 17th paragraph down among the other details part is a statement from the tobacco industry about this particular American Cancer Society study.

Q. Well, Doctor, how frequently did tobacco company statements appear in these articles about smoking and health?

A. Well, in my calculation, they appear in about one out of ten stories. So nine out of ten they don't, they don't have them.

You know, this was a huge study and a big

story in the smoking and health issue, and they did include in the 17th paragraph a statement from the tobacco industry.

Q. The 17th paragraph is the one all the way down at the bottom?

A. Yes.

Q. Okay. Sir, you said, you mentioned -- you reviewed certain specific materials about the class representatives in this case?

MR. MURRAY:

Objection. May we approach, Your Honor?

THE COURT:

Yes.

(At sidebar:)

MR. MURRAY:

Your Honor, I'm going to object to any testimony from this witness relative to the class representatives, beyond the scope of the report.

There is no reliance materials that relate to the class representatives.

He's already asked whether he had reviewed the depositions. That was not in his report. It's not in his reliance materials.

His report deals solely with general public perception. I object strenuously to any reference to these class representatives.

MR. SHOLES:

Judge, at this point I'm not going to

offer to introduce any of that information. We may when we get to that point. At this point I want to give the jury the full perspective of what he did to prepare for this report.

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MR. MURRAY:
But it's not in his report.
THE COURT:
But it's not in his report, Ron. And I have read the report. I don't think the class representatives are ever mentioned in this report.
If they are -- the objection is sustained.
And I'm sure you all are aware of what Justice Kimball wrote and how I ruled when we examined the class reps and the psychiatrist.
MR. SHOLES:
Yes, Your Honor.
THE COURT:
And those rulings still stand.
MR. SHOLES:
Yes, sir.
(In open court:)
THE COURT:
The objection is sustained. Next question, please, Mr. Sholes?
BY MR. SHOLES:
Q. Doctor, did you see any ads about cigarettes in newspapers, magazines and television programs as you did your research?

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A. Yes.
Q. Did you consider those in making your historical analysis?
A. Yes.
Q. Now, sir, we have been using this term and I now want to make sure we have defined it. What do you mean by public awareness?
A. I mean information that has been so widely reported or distributed and circulated, repeated and circulated, that everybody in the society has had access to the information, has heard it, has discussed it, and is aware that the information is something that pretty much everybody knows.
Q. Now, sir, did you prepare a demonstrative that outlines the sources of public awareness, as you use it?
A. Yes, I did.
MR. SHOLES:
At this time, Your Honor, I would like to present DDA-1028 on the screen?
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.
THE COURT:
You may publish it.
BY MR. SHOLES:
Q. Doctor, take us through this and tell us what you found?
A. This is just a way to sort of sort out the various kinds of information or the various ways that people get information, really.

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We get information from our parents, our grandparents, our extended family, our siblings,

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and, you know, we tend to see that as real important information when we get it from people like that.

Mass media, there talking about information that comes from television and from newspapers and magazines and radio, all of the things that we all have, see or hear in the course of our daily lives.

We get information from groups and organizations, and here -- there is a great range of groups and organizations, but here I'm talking a lot about religious organizations or public health organizations like the American Cancer Society.

An important source of information in our lives is government. Government, state, local and national, produce information and have their own ways of distributing it. And of course a lot of that ends up in the media coverage.

We get information from popular culture. We spend, you know, a lot of time, most of us do, watching television or watching movies, listening to music, talking to people in a pleasant way, and of course use slang in the course of that.

And we get information, we may not always be conscious of it that we are receiving information, but we get a lot of information through popular entertainment.

Word of mouth is kind of related to family. I guess it's not as authoritative or we don't depend on it as much as if it comes from a parent, but we get information from friends at work or at school and in social situations.

Information is passed along. Maybe you didn't see a particular article in The Times-Picayune, but somebody else saw it and brings it up and tells you what was in it.

Our schools, of course, provide us with information of all sorts. In particular, information with regard to my research on public health, schools curricula teach public health issues related to smoking, and we have textbooks, of course, that do that.

And the schools provide other kinds of teaching mechanisms, films and so forth that teach health as well.

And then we get information from our -- with regard to health questions from doctors and other health professionals, from nurses and therapists and so forth. So that's an important source as well.

And all of this works together to make us knowledgeable or to give us information, make us aware of particular issues.

And of course I'm here to talk about how we get health information with regard to smoking through these various ways.

Q. Now, Professor, once again, clarify for me, where would advertising, cigarette advertising appear on this source of awareness?

A. Mainly in the mass media. Most of the advertisement we get comes from, you know, newspapers and television and magazines.

Q. Does cigarette advertising play a significant role in public awareness?

A. Well, cigarette advertising is part of the

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information mix that we get.
Most people -- very few people take their health information from advertising. I don't think it's nearly as important in shaping -- my research suggests it's not nearly as important in shaping what the public was aware of as the information that was coming from groups like the American Cancer Society.
Q. So then, sir, if we were to put up a bunch of cigarette advertisements up on the screen, would that be of any real significance for your testimony?
A. Well, we have all seen those ads, and I think it's important because it's more -- it has proved to be more important in shaping what people are aware of and what they know to see what the authoritative -- more authoritative sources like television news and newspapers and the government and groups like the American Lung Association, American Heart Association, we more nearly depend on them for our health information.
Q. Finally, Professor, in determining the public's awareness at a particular period of time, is it important for a historian to review the events leading up to that particular time period?
A. Absolutely. I teach students all the time that in order to understand an historical event, you have to go back, try to put yourself back in the time in which the historical event occurred.
You have to understand the circumstances, and try not to presume that you know everything that has happened since then. You try to put yourself in the position of the people at that time, and look around

for what was going on in those circumstances at that time.
That's very important to get a good, accurate sense of an historical event or time.
Q. And did you do that in this case?
A. Yes, sir, I did.
MR. SHOLES:
At this time, Your Honor, we would like to tender Professor Norell as an expert in American history, with a specialty in American history, including the public's awareness of the health risks and addictive nature of smoking.
THE COURT:
Any cross-examination on qualifications by plaintiffs counsel?
MR. MURRAY:
Yes, Your Honor. Thank you.
THE COURT:
Mr. Murray?
-- -- --
VOIR DIRE EXAMINATION
BY MR. MURRAY:
Q. Good morning, Your Honor, ladies and gentlemen of the jury, and good morning, Professor Norell.
Professor Norell, you and I met a few minutes ago, did we not?
A. We did, yes, sir.

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Q. Professor, I want you to know that I got the honor of questioning you because Mr. Herman asked whether there was anybody that majored in history in

college, and I was the only one that raised my hand.
A. Okay.
THE COURT:
Mr. Murray, I don't think your mike is on.
MR. MURRAY:
Thank you.
THE COURT:
Better.
BY MR. MURRAY:
Q. Professor, you grew up in Alabama; is that right?
A. That's right.
Q. Did you spend any time in Louisiana?
A. Just as a tourist a time or two. Growing up, now. I have done research here over the years since then.
Q. Now, Professor, you were asked by Mr. Sholes why you had your interest in civil rights. And I have reviewed your publications in civil rights, and it's quite impressive.
A. Thank you.
Q. But I would like to ask you why you have an interest in smoking and health?
A. Well, a number of years ago I was asked to research the smoking and health question, and I have done so for a number of years since then.
Q. In fact, in 1994, you were hired by the law firm Shook Hardy & Bacon and the Jones Day firm to do research on public awareness of smoking and health; is that right?
A. Yes. Two lawyers, one from each of those

firms, asked me to look at a case that they had in Alabama and to do research on the larger question.
Q. And prior to that date, you didn't have any more involvement in that issue than anybody in this courtroom including the jury, did you?
A. Well, I had not. I had not worked on research on that.
Q. So you were asked by these lawyers to research the public awareness. Would that have included the things about which the public was unaware?
A. Well, I looked at -- as I said, I looked at a lot of information that revealed what the public was seeing. That was really my research assignment, and I didn't -- I mean, there was plenty to look at there.
Q. Was it of any interest to you, Professor, as to what the American public did not know that the cigarette industry did know?
A. Well, I guess I have since thought about it, but I of course was doing work, I was doing research on what the public did know. And I found of course that the public knew a great deal.
Q. If you wanted to compare what the public knew with what the cigarette industry knew, then you would have had to review those industry documents

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that Mr. Sholes talked about, would you not?
A. Well, I mean, I believe that the tobacco company employees and the tobacco executives are part of the American public. They were informed of the same dangers of health through the public media just as the public was.

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Q. And you have testified to that. You said that the industry knew as soon as the American people knew about the smoking and health issues; isn't that true?
A. Well, I think what I said is the industry knew what the American public knew.
Q. That's different. Maybe I misunderstood you.
Are you saying that the industry knew what the public knew, or that what the public knew and what the industry knew are the same?
A. Well, I think that the industry is part of the public, and that they are as informed as the public.
In my research, I can say on the basis of what I have done that the tobacco industry knew what the public knew, because they are part of the public.
Q. Maybe I'm having a little bit trouble with the word "know." Is there a difference between knowing something and believing it?
A. Well, as I said earlier, I mean, my research was on what the public was aware of, the information that came to them.
And what the public was informed of, the tobacco company employees were informed of at the same time. That's clear to me.
Q. You have heard the expression two sides to every story?
A. Yes.
Q. What if the public is getting two sides. They would be then aware of both sides, would they

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not?
A. Well, yes, they would. And my research indicates that the public was getting two sides, in terms of the information was coming to them from the public health community and, as I suggested, there was comment regularly reported from the tobacco industry as the other side.
Q. So if you are getting two messages, you may believe one and not believe the other?
A. Well, my research indicates that the overwhelming majority of Americans were getting information, and believing it, though belief ran a little bit behind the awareness about the -- about the question of the dangers of cigarettes.
Q. Professor, you have rendered a report and you have been deposed in this case; is that right?
A. That's right.
Q. And I have read both your report and your deposition, and I have little quarrel with what you had to say.
But what I would like to talk to you about is some things that you haven't talked about that I think relate to your opinions.

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You gave a list of the sources of information that the American public had, and you included television, but not radio. Did you investigate radio?
A. You know, I looked for information about radio.
Radio is harder to study because there are not good archives that have recorded a whole lot of radio.

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Q. So you looked, but couldn't find much?
A. Well, I think it's there, but it hasn't been well documented.
Q. Well, you didn't mention it on your report and you don't have it on your list. So I'm trying to find out if radio is part of the information that you are relying upon to give your opinion?
A. Certainly radio is part of the documentary record, but in order really to rely for forming my opinion, I needed to find a lot of documents that showed me exactly what had been on radio at a particular time, and there wasn't much of that.
Now, I did see in Dr. Ochsner's papers reports of Dr. Ochsner giving talks on the radio, interviews on the radio about smoking and health.
But again there weren't enough documents to make that a crucial part of what I relied on in this case.
Q. All right, let me ask you a question directly. Did you rely on information that was imparted to the American public through the media of radio in coming to your conclusions?
A. No.
Q. Speaking of radio, do you recall a broadcaster on radio, I can't remember his name, but he has a very deep voice, and he would talk about something and then he would say: And now the rest of the story. And then there would be a commercial, and he would come back and give you the rest of the story. Have you ever heard of that fellow?
A. Paul Harvey is that fellow.
Q. Paul Harvey, right.

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A. I have heard of him, yes.
Q. So what I want to talk to you about a little bit is the rest of the story.
Now, did you do any investigation, Professor, of the industry's influence over the materials to which the American public has been exposed with regard to smoking and health?
A. I looked at, of course, what the industry was reported having said in the media. I have, you know, seen some documents in the course of cases that purported to do that.
But again my focus was on the information that was coming to the public, to the masses of the people, because it was -- you know, my work was on what the average person had available to him or her with regard to information on smoking and health.
Q. Have you been given access to the press releases that have been published by the Tobacco Institute, the Tobacco Industry Research Committee, or the Committee on Tobacco Research?

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A. I have seen some of those press releases as they have been submitted as documents in court cases.
Q. But that wasn't part of your investigation?
A. Well, Tobacco Institute press releases, of course, were occasionally cited in the information that came to the public, and in those terms, in that way, I did have access to what those said, what the press releases had in them.
But that information wasn't available to the public, and thus it was not part of my research purpose.

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Q. Well, Professor, I noticed in your reliance materials scores of letters to and from Dr. Alton Ochsner. That wasn't directly communicated to the public, was it?
A. Well, no. My purpose there was -- is that, you know, Dr. Ochsner was, as I would like to explain, was a great leader in the encouragement and development of public awareness.
And I examined Dr. Ochsner's papers to see how in fact he went about creating so much -- such an expanded awareness and how he carried out his public campaign, really. And for that reason, I looked at his papers.
Q. Did you do any investigation of what the cigarette industry told the American public about Dr. Alton Ochsner?
A. You know, I may have seen references in his papers to -- of a comment about that, but sitting here today I can't recall exactly what that was.
Q. Not very flattering, was it?
A. You know, Mr. Murray, I frankly don't recall.
Q. Did you do any investigation of direct communications from the tobacco company to the American public such as through correspondence to individuals and to schools?
A. I did not because, of course, private correspondence was not part of the public information.
Now, I have seen some letters that came up in the course of working on court cases.
Q. Have you done any investigation of the

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advertising budgets of the cigarette industry --
A. Well --
Q. -- with relation to the promotion of cigarettes to the American public?
A. Certainly in terms of examining the New Orleans Times-Picayune or The New York Times, there often are comments in there about how much money is being spent on advertising, you know, by the tobacco industry or any number of other industries that advertise a lot.
And so I have seen it in that regard, and there are reports available to the public from some of the government agencies or at least one government agency about that.
Q. Dr. Norell, in response to questions from Mr. Sholes, you seem to be of the view that cigarette advertising was not a very significant

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factor in the information that was imparted to the American public. Is that your view?
A. Well, my opinion is that advertising was a large part of the -- was a part of the mix of information that came to the public, but my research indicates that advertising was really not very influential at all in shaping what Americans and Louisianians knew, understood, were aware of about the smoking and health question.
The research I have done suggests that people really don't take their health information from advertisements.
Q. And that's your view as a history professor?
A. It is.
Q. Have you done any research to determine the

views of the public health community on that subject?
A. Well, of course, there is a lot of information in the public reporting about, you know, what the public health community thinks about all kind of things, including advertising.
Q. Doctor, what you have done in order to come into this courtroom and testify to this jury -- and I don't mean to demean it in any way because it certainly has some value -- but what you have done is gone into the literature, the popular literature, magazines, newspapers, the media, television -- you said not radio -- and you have found material that was imparted to the public; is that correct?
A. Yes.
Q. And you have been doing that for almost ten years now?
A. Nine years off and on.
Q. And you have accumulated a mass of material, copies of newspaper articles and magazine articles. And you describe that as your reliance material, and that was delivered to me in 24 volumes, six banker boxes full of material; is that about right?
A. Well, I have done a lot of research on a lot of documents, and there is a lot of material on smoking and health in Louisiana. And it could be 24 books. I didn't actually see the boxes, but --
Q. Now, you don't represent to the jury that you have everything in those six banker boxes, do you?
A. No, I don't. I have done lots of research that helped me understand the subject that are not directly relevant to this case, and thus we clearly

picked the things that were most important that related directly to this case to include in the reliance materials here.
Q. So in your review of that material, if you deemed it important, then you kept it as part of your reliance materials?
A. Well, I included the most important part, but of course there are lots of other material that I looked at that is important to me in shaping my understanding of this subject that is not in those six boxes.
Q. Well, I guess what I'm trying to find out is what your selection criteria were as you went through this material and you saw a newspaper

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article and decided you were going to include it in your materials or you decided you were not. How did you make that decision?
A. Well, if they were the kinds of documents that were the clearest, that represented in a good way a much -- usually the much broader selection of documents, it really has to do with being able to make clear for the jury what my research is.
Q. Was there any attempt to select documents you thought most supported the opinion that you are going to give today?
A. Well, yes, there are documents there that do that, and of course there are also documents that include information that shows that this was a complex subject, there were varying viewpoints on it, that there are statements in there from, you know, the tobacco industry that is contrary to what my overall opinion is, or from the public health

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community that's critical of the tobacco industry. So I didn't select just to argue one side.

MR. MURRAY:

Your Honor, is this a good time to break?

THE COURT:

Yes, we will take our midmorning recess at this point until 11:00 by the wall clock.

(In open court without a jury present:)

THE COURT:

Let the record reflect the jury has left the courtroom.

Anything for the record by plaintiffs counsel?

MR. MURRAY:

No, Your Honor.

MR. RUSS HERMAN:

No, Your Honor.

THE COURT:

Defense counsel, anything for the record?

MR. SHOLES:

Nothing, Your Honor.

MR. WITTMANN:

No, Your Honor.

THE COURT:

We will recess until 11:00.

(A recess is taken at 10:46 a.m.)

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(In open court with a jury present at 11:05:)

THE COURT:

Please be seated.

Mr. Murray?

MR. MURRAY:

Thank you, Your Honor.

BY MR. MURRAY:
Q. Professor, before the break, we were talking about your research methodology. Do I understand correctly that you had research assistants who

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assisted you in that endeavor?
A. Yes.
Q. Am I correct in understanding that the research assistants would go to the library, read material, select material and give it to you for your consideration?
A. My research assistants I instructed to look occasionally through newspapers, a lot of times through newspapers, and to copy everything that had to do with tobacco, for example.
Q. And so it was your instruction to your research assistant to copy everything that had to do with tobacco and deliver it to you?
A. Yes. From The Times-Picayune, for example, those were my instructions.
Q. Let's talk about The Times-Picayune. With respect to The Times-Picayune articles that your research assistants brought to you, did you include all of those in your reliance materials?
A. No. I have looked at -- there is a lot of stuff in the Times-Picayune, and I chose

representative samples, but not everything, because it's just way too voluminous material.
And some of the things that were collected have -- are material like information on the price of a tobacco company. So if you had a headline that said Tobacco Company Stock Goes Down, that would be there, but of course --
Q. It didn't have anything to do with smoking and health?
A. Right.
Q. But did you include the things that had to do with smoking and health in your reliance material?
A. Well, I included some of them, a representative sample. But again there is so much material and so much of it that I looked at, it was just too voluminous to include everything.
Q. Well, did you try to eliminate repetition? Suppose there was something that was the same material run six or seven times, would you have just selected one or did you put all six or seven in?
A. Well, again, if it was six or seven articles about the same stop smoking clinic, I might put only one of them in there. But if there were a lot of articles that were crucial to the -- to the development of the smoking and health story, added new information, there were days that all six or seven in a row had to go in.
Q. Tell the jury who paid your research assistant?
A. The law firms that engaged me.
Q. Tobacco lawyers?
A. The law firms, primarily Shook Hardy & Bacon

and Jones Day Reavis & Pogue.
Q. Now, Professor, you put up for the jury a list of all the places that you visited in performing your research. Tell the jury whether your travels ever took you to Wilson, Louisiana?
A. They did not.
Q. Do you know anything about Wilson, Louisiana?
A. I have heard of Wilson, Louisiana, yes.

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Q. Well, I'm like you, I have heard of it but I have never been there.
Professor, I'm told that The New York Times readership in Wilson, Louisiana, is virtually nil. Would you agree with that?
A. Well, I don't know that. I wouldn't be surprised, though.
Q. I'm told they don't think a whole lot of the New Orleans Times-Picayune either.
A. I don't know about that. The Times-Picayune is a good newspaper.
Q. Where that brings me is this. Did you attempt to determine the circulation of the newspapers that you have identified as sources of material for the Louisiana public?
A. Well, the way I did it was to say what are the major newspapers and the major cities of Louisiana that are going to be most important in seeing what the public in Louisiana was informed of, and that included The Times-Picayune and the Baton Rouge Morning Advocate and the Lafayette newspaper and the Shreveport newspaper and a few others.
Q. Professor, we have a rule that has worked

pretty well for us in this trial, and that is this: If I ask you a question that you can answer yes or no, would you please do that, and then if you would like to explain, you are welcome to do that?
A. Yes, sir.
Q. So I take it the answer to my last question was no, you did not attempt to determine the circulation of the newspapers that you have included in your reliance materials?
A. No.
Q. Are you trained to investigate the reading habits of Louisiana adults?
A. I have not been -- I'm not a professor of reading. But in terms of doing historical research I look at the material that is widely available to people in Louisiana and have operated in the belief that people -- the newspapers that are published are read by the people here.
Q. So you assumed that if it was in the newspaper, people read it?
A. Not -- I don't assume that about any one particular article, but I do believe that stories that appear regularly and in detail over a long period of time have been read by the public in Louisiana.
Q. Did you make that assumption, that same assumption with respect to the youth of Louisiana, 12 to 17?
A. Well, I believe that the youth in Louisiana had -- were exposed to newspapers and magazines, often directly. Usually directly, but also in kind of a secondhand fashion from their parents or

grandparents; that is, they were told about articles, heard discussions about articles in newspapers.
Q. So you haven't assumed that children have read those articles if you show them to the jury?

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A. I believe what I said was I believe that they did read these articles, some of them. I was an avid newspaper reader, although I'm not from Louisiana. I assume there are lots of students who are exposed to those newspapers.
Q. Would you agree with me that teens tend to be very selective in what they read, if they even bother to look at a newspaper?
A. You know, I haven't studied that, and I think that I would be hard pressed to offer an opinion on that.
Q. So you wouldn't argue with me if I told you my 15-year-old kid comes up, grabs the sports page, that's the last I see of the sports page, but that's the last he sees of the newspaper?
A. No, sir, I wouldn't argue with you.
Q. On the other hand, youth, teens, can't help being exposed to billboards, can they?
A. We all see billboards if we move out in the public, yes.
Q. And if they bother to pick up a magazine and thumb through it and they see an advertisement for cigarettes with a nice looking young lady in it, that will catch their eye, wouldn't you think?
A. You don't have to be a teenager for a nice looking young lady to catch a reader's eye. But certainly my 15-year-old son would pay attention to

that, yes, whatever ad it is in.
Q. That's the purpose of advertising, to catch your eye, to grab your attention?
A. It is intended to do that, yes, sir.
Q. Are you trained to investigate the impact of cigarette advertising on the perceptions with regard to smoking and health of adults?
A. I am not an advertising expert, but I of course have seen the ads as I have done the research through all of this material, and I have certainly considered critically what that -- what the ads have contributed to the smoking and health awareness.
Q. Are you trained to investigate the impact of cigarette advertising on the perceptions of youth?
A. Again, I'm not an advertising expert or a psychologist, but I have investigated the overall impact of advertising on the information in Maryland.
Q. Doctor, have you done any research on the impact of advertising on youth that has gone to the published literature to find out what experts in the field have to say about that subject?
A. I have seen some of that, but I haven't made a complete study of it.
Q. Now, you have a very impressive list of publications on which I congratulate you, but have you ever published on the subject of smoking and health?
A. No.
Q. And I take it then it's fair to say that your opinions that you will give this jury on the subject of smoking and health and Louisiana citizens have

not been peer reviewed?
A. No.

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Q. Doctor, you put up a demonstrative that showed the sources of information. I don't recall, did you include in that list motion pictures, movies?
A. Yes.
Q. Do you have any knowledge of the cigarette industry paying for the placement of cigarette usage and images in movies?
A. I have seen documents to that effect, yes.
Q. Have you compared the frequency of that happening with the frequency of references to coffin nails? You have clips of that.
A. I haven't done a comparative study. I know both those things occur in movies.
Q. Have you attempted to determine the frequency in which that has occurred, how often people have been exposed to that kind of imagery as result of payments by the cigarette industry to the movie industry?
A. No.
Q. Now, when you were asked about polls, you indicated that you have seen some industry polls. Who selected the industry polls that you have had the opportunity to review?
A. Many of them of course were selected by plaintiffs lawyers as polls that I was going to be asked about. And I have asked lawyers for information from them: What kind of polls do you think I might be confronted with?
Q. Have you asked the tobacco lawyers: Gentlemen, have I seen all the polls conducted by

your clients on the issue of smoking and health?
A. No.
Q. Have you done any research to determine what the opinion makers were trying to communicate to the public; that is, people like Dr. Ochsner and public health officials and the Surgeon Generals? What was the message that they were trying to deliver?
A. Well, clearly their message was that cigarettes are a dangerous product, cigarettes are so dangerous that they could kill you, that cigarettes are a product that is hard to quit or it's addictive is a term that is often used. That's generally the message.
And of course the public health community has gotten very specific about which diseases.
Q. And Doctor, would you agree with me that these opinion makers, these public health authorities, have particularly tried to deliver that message to the youth of America and Louisiana?
A. Yes.
Q. And would you agree with me, Doctor, that with regard to youth smoking, they have failed miserably?
A. No.
Q. You don't agree with that?
A. No.
Q. You think they have succeeded?
MR. LONG:
Objection, Your Honor. May we approach?
THE COURT:
Yes, you may approach.

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(At sidebar:)
MR. LONG:
Your Honor, we object. My only objection is while this may be proper, certainly proper cross-examination on the merits, it's way beyond qualifications.
MR. MURRAY:
I think that's well taken, Your Honor. I will withdraw it at this time.
(In open court:)
MR. MURRAY:
Professor, I will withdraw that question at this time.

BY MR. MURRAY:

Q. Finally, Professor, have the tobacco lawyers shared with you the cigarette industry documents on youth smoking?

A. I have seen some tobacco industry documents on that, on that subject. And as I recall, they were part of the case or they had been mentioned and, yes, the lawyers gave them to me.

MR. MURRAY:
Thank you, Doctor. That's all the questions I have at this time.
THE COURT:
Any redirect on qualifications, Mr. Sholes?
MR. SHOLES:
None, Your Honor.
THE COURT:
Objection to qualification, Mr. Murray?

MR. MURRAY:
None, Your Honor.
THE COURT:
The Court will recognize the witness as an expert in the field of American history, with a specialty of American history including the public's awareness of the health risk and addictive nature of smoking.
Proceed with your direct.
MR. SHOLES:
Thank you.

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DIRECT EXAMINATION (Continued)

BY MR. SHOLES:

Q. Okay, Professor, let's be sure that we clarify some points.
When did you become involved in researching public awareness of the risk of smoking?

A. In 1994.

Q. When did you start researching Louisiana's awareness of the risks of smoking?

A. About 1996.

Q. And about how many hours have you put in to studying this issue?

A. Oh, hundreds of hours.

Q. Professor, do you have an opinion as to whether or not people in Louisiana were aware of the risks of smoking?

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A. Yes.
Q. What is that opinion?
A. Well, my opinion is that people in Louisiana,

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like people in the whole of the United States, have been aware for hundreds of years that smoking was bad for your health, and for more than a hundred years that cigarettes were bad for your health.

And that in the Twentieth Century -- and at the same time for all of those years, for hundreds of years, people have known that tobacco use, tobacco consumption was hard to quit or addictive.

And that in the Twentieth Century, in the 1900s, we have seen a rapid increase in the awareness of the particular diseases that come from cigarette smoking that could kill you.

Q. Doctor, is there a recognized method that historians use for studying or analyzing the past?
A. I believe so, yes.
Q. And is that called the historical method?
A. Yes.
Q. Now, why are historians uniquely qualified to study or analyze the past?
A. Well, historians are trained to place historical events, historical situations in the broad context or broad circumstances, so that you try to understand why an event or situation developed the way it did at the time that it did.

We are also trained in the historical method to avoid certain problems or certain mistakes that people make when they talk about history. Problems like assuming knowledge that we have today that people at that time didn't have. We talk about the mistake of 20/20 hindsight.

There is also a problem of understanding, being able to read critically a document and know

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what the bias of that document might be.

So those are some of the main features that a person schooled in the historical method should follow.

Q. Now, you have mentioned hindsight a couple of times. Do you teach your students to avoid using hindsight in analyzing the past?
A. Yes.
Q. Now, Professor, let's jump into this a little bit. Why is it better to use newspapers and television news programs as evidence of historical events as opposed to other types of materials?
A. Well, newspapers, as we know, take a picture kind of, a viewpoint of the circumstance at a particular day.

A television news program does that as well. The nightly news does that.

And those documents give us a reflection of events or situations at that time. And that's important because when people write about that later on, oftentimes they can't go back and really understand the circumstance in which an event took place.

Q. Well, let's go back and look at one area of Louisiana history. And you have mentioned Dr. Alton Ochsner. The jury has heard a lot about him. And

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once again, who is Dr. Ochsner?
A. Well, Dr. Ochsner was a physician here in New Orleans.
Dr. Ochsner taught at the Tulane Medical School. He was a dean for a short time at the medical school, and got at odds with Hewey Long and

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ceased being the dean.
Dr. Ochsner was a chest physician, a chest surgeon who had come here to Louisiana in the late 1920s, and had opened up a practice as a surgeon after he -- while he was teaching at the medical school.
Dr. Ochsner early on figured out that there was a connection between smoking and lung cancer.
When he was a medical student, somebody, a doctor, one of his teachers, showed him -- asked him to look at an operation of actually a person who had died and said, You will never see another -- you may never see another case of lung cancer in your life as a surgeon. This was about 1920.
Well, when Dr. Ochsner came to New Orleans and began doing a lot of work with people who had lung problems, he saw lots of lung cancer. And he made the connection, not on the basis of a lot of laboratory research, but on the basis of just a smart doctor with intuition, he believed that was it.
And he began to promote awareness that there was a connection between cigarette smoking and lung cancer. And he's really the first physician, first doctor in the country who made that assertion, and he never let up arguing that, telling people that there was a connection.
He was ahead of the public health community, but ultimately all the other public health figures came around to see that Dr. Ochsner had been right and he had been right all along.
And as he continued with the Ochsner Clinic

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here into the 1930s and '40s and '50s and into the 1970s, he continued at the same time to be a campaigner, in Louisiana for sure, but really throughout the country as a main advocate for people to stop smoking, to understand that smoking was the overwhelming cause of lung cancer and other diseases.
And as I said earlier, you know, he communicated with all kinds of people, school children, civic clubs. He was a famous guy.
Q. So he shared his views outside of just the public health and the medical community?
A. Yes. Very -- he was very committed to informing the public.
Q. Were his efforts ever published in newspapers?
A. They were often published in newspapers, yes.
Q. Did you put together a demonstrative that might show some of these?
A. Yes, just a small sample of the hundreds of stories that appeared in the Louisiana newspapers.
MR. SHOLES:
I would like to put on the screen for

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counsel DDA-1035.
MR. MURRAY:
No objection.
MR. SHOLES:
And we move to publish at this time, Your Honor?
THE COURT:
You may publish.
BY MR. SHOLES:

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Q. Now, Doctor, I want to be clear. You just said that there were hundreds of them. How did you go about selecting which ones you were going to show us today -- or strike that.
Why didn't you show us all hundreds of them?
A. Well, we would have been here for way past the end of Jazz Fest if we would have done that.
MR. RUSS HERMAN:
We don't want to do that.
MR. SHOLES:
We don't want to miss Jazz Fest.
A. These are just samples. I picked one or two from a year, and there were stories, many more stories.
There is one on the left in 1952. There were many more stories in 1952. There were many more stories in 1954 in The Times-Picayune. There had been stories well before 1952. Dr. Ochsner published his hunch about this in 1939, as early as that, and he kept campaigning.
So this is just a small sample of what one often saw in The Times-Picayune about Dr. Ochsner's antismoking efforts.
Q. Now, Doctor, you have mentioned earlier -- we can take that down, Ted -- that you reviewed as part of your research Dr. Ochsner's personal papers; is that right?
A. That's right.
Q. In your professional opinion, was Dr. Ochsner successful in getting his message across that smoking is dangerous?
A. I think so. I mean, I think it is certainly

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clear given the amount of public information he distributed here in Louisiana.
And, you know, that's just -- I just showed you The Times-Picayune, but Dr. Ochsner would be frequently reported on in magazines that people in Louisiana read, just as people around the country did.
So, yes, he was extraordinarily successful in Louisiana, but he had a broad impact throughout the country on the subject.
Q. We are going to come back to Dr. Ochsner, but was he the first famous person to ever say anything about smoking or tobacco being dangerous?
A. No.
Q. Well, Doctor, do you have a demonstrative that might show us somebody who was a little bit further back?
A. I do, yes.
MR. SHOLES:
Move to prescreen DDA-1019.

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MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish, Your Honor?
THE COURT:
You maybe publish.
BY MR. SHOLES:
Q. Dr. Ochsner, tell us what we are about to look at here.
I'm sorry, I have heard so much about Dr. Ochsner, I might be calling us all that.
Dr. Norell, please tell us, what are we

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looking at here?
A. This is a document that the English king, King James I, issued in 1604. This is just a few years before he issued the King James Bible that some of us read growing up.
And in this Counterblaste to Tobacco, which was really a pamphlet very widely published, that he distributed among his subjects in England and for many years, he said among other things that tobacco -- using tobacco was a custom loathesome or hateful to the eye, hateful to the nose, harmful to the brain and dangerous to the lungs.
And King James was, as you can tell, adamant against the use of tobacco.
Q. And that's some four hundred years ago; is that correct?
A. Just about, yes, 399 years ago.
Q. And people have been warned about that, about the dangers of smoking and tobacco, that long?
A. Well, yes, and really before.
I mean, when Christopher Columbus and his guys took back tobacco to Europe, people loved tobacco, but they also -- almost immediately some other began to condemn it as a habit-forming practice.
Q. Well, Professor Norell, A Counterblaste to Tobacco, was it ever repeated? Was King James' words ever repeated?
A. Yes. Over the centuries, the four centuries since it came out, people writing about the use of tobacco have gone back time and time again to the reference of King James' Counterblaste as saying --

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as a way to tell the public later on that smoking had always been recognized as a habit forming, nasty, dangerous habit.
Q. As a historian, what's the significance of a quote like this being repeated over and over again in time?
A. Well, I think it's important for using -- people like to have an historical reference to make the connection between a present day concern with something that's happened a long time ago.
It's also a way that public information gets passed along and passed around. You have the memory of an earlier statement, and it gets repeated over and over and contributes to the larger information mix over time.
Q. Let's move forward to the early United States.

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A. Okay.
Q. Were there people in the early United States history who spoke out against tobacco?
A. Yes. Signers of the Constitution, the Declaration of Independence, like Benjamin Rush, who was a physician and who was clearly -- who was open in his condemnation of the use of tobacco and campaigned against it in the 1770s and '80s.

John Quincy Adams, who was President of the United States in 1820s, son of a president, wrote that tobacco was a terribly addictive habit that he had -- he was proud to say that he had overcome.

So throughout American history, you see people, public people, people who other folks listened to and looked to as important folks in our

history, condemned the use of tobacco.
Q. We can take this exhibit down now.

Doctor, when did cigarettes as a form of tobacco use become popular in America?
A. Well, cigarettes were used, people smoked -- Civil War soldiers smoked cigarettes quite often, because cigarettes are an easier way for a soldier to use tobacco, and they did so to some extent in the Civil War.

But cigarettes at that point were hard to get, and some people recognized that if you could make cigarettes easier, and especially if you could provide them to people already rolled, because they had to roll them most of the time themselves, that you could -- more people would use cigarettes.

And in the 1890s a fellow named Bonsack invented a cigarette rolling machine, and this produced cigarettes at a low cost, made plenty of them available.

At the same time, you also had the invention of the safety match, which also made it easier to carry around a pack of smokes in your pocket.
Q. Why would a match be important?
A. Well, you know, before then, I mean, the invention of the safety match was an important thing because before then it was pretty dangerous to carry a match in your pocket. People didn't do it very much because sometimes they sort of spontaneously combusted in your pocket.

So the invention of the safety match made it easier for people to smoke, easier and safer for people to smoke cigarettes. And cigarettes from the

1880s on grew very rapidly in terms of their overall consumption in this country.
Q. Well, back in the 1800s, as the use of cigarettes became more widespread, were there any people, groups speaking out against it?
A. Yes. You know, there have been people campaigning against tobacco for hundreds of years. But the cigarette, when it came into widespread use at the end of the 1800s, it brought about a very strong anticigarette movement; that is, lots of people joining organizations and campaigning against it.

Somebody ran for president in 1920 on an anticigarette platform. There were organizations

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around the country that really believed that the cigarette was just an evil that should be -- that should be outlawed, and indeed a lot of states did outlaw the sale of cigarettes.
Q. These efforts to speak out against tobacco and cigarettes, were they widely publicized?
A. Oh, yes. It was a big reform campaign that was often reported on in newspapers. Of course, you only had newspapers and magazines at that time.
Q. And you said that there was some states who decided to ban the use of tobacco?
A. At least -- my recollection is that there were at least 16 states that did ban cigarettes, and nearly all of the states debated about whether to ban cigarettes, including Louisiana.
Q. That would suggest, Doctor, that people back then when they were passing those laws were aware of the risk of smoking. Would I be right if I said

that?
A. Absolutely. I mean, there was a keen awareness that cigarettes were dangerous, that they were habit-forming, they were bad for your health.
Q. What about the sale of cigarettes to minors? Did states ever get involved in that?
A. Yes. Nearly all states have passed laws against the sale of cigarettes to minors.
Q. Did any Louisiana courts to your knowledge ever limit smoking in any way?
A. Well, Louisiana has passed, you know, laws against sale of cigarettes to minors, it also passed laws about teaching health education about smoking.
There are laws against the use of tobacco on streetcars in New Orleans I believe passed in 1890.
Q. What about in Massachusetts?
A. Yes, Massachusetts had those same kinds of laws as well.
Q. Now, Professor, you have mentioned that you have reviewed educational materials. We are going to switch gears a little bit.
What did you look at to determine whether or not schools in fact taught about the risk of cigarette smoking?
A. Well, looked at three things.
First of all, there were state laws passed in Louisiana, and really around the country in the late 1800s, that -- state laws that ordered that the schools teach health education, especially health education about the dangers of tobacco and other things, narcotics and alcohol.
And those laws directed the state education

systems to create curriculum. So people in Louisiana would write a curriculum, a health curriculum, and it would tell what kinds of things had to be taught in schools about smoking and health and other health risks.
And then they have laws that oversee how textbooks are chosen, and the textbooks were chosen on the basis of whether they too implemented the teaching of the health risks associated with smoking.
Q. Do you have a demonstrative that explores

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this area?
A. Yes.
MR. SHOLES:
We move to prescreen DDA-1050.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish, Your Honor?
THE COURT:
You may publish it.
BY MR. SHOLES:
Q. What are we looking at here, Professor?
A. We are looking at on the left a state law that, you know, says that -- Louisiana state law that says that to provide the study of scientific temperance of alcohol and narcotics, and tobacco was typically grouped under a narcotic at this time.
And then on the right was the course of study. This was the curriculum guide for New Orleans in 1902, and there it says in the third grade that students are to be taught the effects of

tobacco on general health.
And of course that connects to the ongoing campaign against cigarettes.
Q. Let's be sure we fully understand. Does this suggest that it is the law in Louisiana that children be taught about the risks of smoking while they are young in school?
A. Yes.
Q. Have laws like this been on the books of the state of Louisiana since 1888?
A. Yes.
Q. Well, Professor, how do we know that it was actually put in those textbooks?
A. Well, because we examined the textbooks.
Q. Did you bring an example of some of the textbooks that were used?
A. Yes.
MR. SHOLES:
Can we prescreen DDA-1041?
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish, please?
THE COURT:
You may publish.
BY MR. SHOLES:
Q. Doctor, tell us about these?
A. Well, these are just a few examples of textbooks. These are, of course, earlier textbooks, from 1940, '41 and '42 (sic).
These just pulled out some of the relevant statements about smoking and health. You see there,

the one on the left: Tobacco contains nicotine, which is a narcotic, habit forming and poisonous drug.
That's in the textbook that students in the 1940s, and probably in the early 1950s were still using these books.
The second one: Tobacco contains nicotine, a drug that is habit-forming.

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It uses a term that was often used in early American history: A slave to tobacco, people become slaves to tobacco.

And again the last, you see that again, in the 1947 textbook, Health and Body Building, a similar sort of statement.

It's very consistent all the way through these kind of statements, except as we go forward in time, the information becomes more specific about particular diseases that the textbooks identify as associated with cigarette smoking.

Q. Well, let's go forward in time, because at least one of our class representatives was in school in the 1960s and '70s.

Did you have a demonstrative that looks at some of the types of textbooks that were used at that time?

A. Yes.

MR. SHOLES:

Can we prescreen, Your Honor, DDA-1081?

MR. MURRAY:

No objection.

MR. SHOLES:

Move to publish?

THE COURT:

You may publish it.

BY MR. SHOLES:

Q. Professor, were these the types of books that were available in the '60s and '70s?

A. Yes.

Again, you see the emphasis on nicotine, on addiction. In the first one it talks about habit-forming.

In the second one, of course, again we see a reference to addiction and for diseases of the heart and blood vessels.

And of course they often -- the example is not drawn out here, but starting in the early 1950s, the textbooks typically talked about lung cancer, connected lung cancer specifically to the use of cigarettes.

Q. And it's the law that they be taught this information?

A. That's right.

Q. Well, Doctor, were textbooks the only method used to educate kids?

A. No. Textbooks, of course, are the main thing that teachers typically rely upon, but teachers often use film strips and other kinds of visual material to reinforce this.

And we see in schools in Louisiana and around the country a commitment to using or producing film strips and films that particularly taught the health risks associated with smoking.

Q. Well, did you bring us any examples of the

kinds of educational films that were available during this time?

A. Yes, I have. I do.

MR. SHOLES:

Your Honor, at this time we would

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move to screen DDA-1072.

MR. MURRAY:

No objection.

MR. SHOLES:

May we play it, Your Honor?

THE COURT:

You may publish it.

THE WITNESS:

This is a film strip.

MR. SHOLES:

We might want to lower the lights just a little bit before we start this.

THE COURT:

Somebody open that corridor door and this one.

THE WITNESS:

This is a film strip, the kind of thing that was used before classrooms had VCRs.

MR. SHOLES:

Proceed.

(A film strip is shown entitled "I'll Choose the High Road.")

COMMENTATOR:

Together let's see why smoking is harmful for growing boys and girls. But more than that, let's look carefully at

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the reasons for believing there is a connection between cigarette smoking and --

Let's take a good close look at a common habit, smoking. We have seen how smoking irritates the nose, throat and chest; how it increases heartbeat and blood pressure; and how tar in tobacco damages the cilia and collects in the lungs.

If this happens, day after day, year after year, what will be the effect upon your health and your body?

They found that smokers are more likely to suffer from heart and lung diseases.

People who smoke catch colds more than nonsmokers, and their colds last longer too.

Among cigarette smokers, doctors discovered that deaths from lung cancer increased alarmingly.

The doctors found that the group of men who had never smoked at all had the lowest death rate from lung cancer. But from there on, the more cigarettes the men had smoked, the higher was their death rate from lung cancer.

That is, your chance of getting lung cancer increases sharply if you smoke cigarettes.

A habit like smoking once formed is

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very hard to break, you know.

The choice is yours. What will it

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be?
(End of video.)
THE WITNESS:
That was a film strip mainly aimed at junior high school and high school students.
BY MR. SHOLES:
Q. And you have another one also; is that correct?
A. That's right. I have another one that was aimed more to elementary school kids.
MR. SHOLES:
Let's proceed. That's part of the same exhibit, Your Honor.
THE COURT:
Proceed.
(A video is presented entitled "The Huffless, Puffless Dragon.")
A SMOKING DRAGON:
I am Dragoon. I huff, I puff, I dare anybody to take my bluff.
A SMOKING DRAGON:
Yeah. Give me a puff of that wonderful stuff.
A SMOKING DRAGON:
Stop dragging your tail and try some.
A SMOKING DRAGON:
Have a drag, Drag Knight, and get in right.
PUFFLESS DRAGON:

No, thanks, I don't smoke.
A SMOKING DRAGON:
He doesn't smoke?
A SMOKING DRAGON:
A dragon who doesn't must be --
A SMOKING DRAGON:
Come on, come on.
A SMOKING DRAGON:
Okay, John, stop putting it on. This ain't no joke. You have got to smoke.
PUFFLESS DRAGON:
Go on, you are killing yourself.
You are yellow, fellow. Nicotine has turned you yellow.
You are passing out with a case of the shakes.
You can't fight, you are out of breath. Your lungs are out, your throat. That's what smoking will do.
A SMOKING DRAGON:
Why, oh, why did I ever smoke? I hack, gasp, I faint.
PUFFLESS DRAGON:
It should be plain to you to see that smoking leads to misery. There is no question about it, smoking is bad for you. Bad for your lungs, bad for your heart.
Next time someone offers you a cigarette, have the strength to say I don't smoke.
(End of video.)

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MR. SHOLES:
You can turn the lights on now.
BY MR. SHOLES:
Q. Doctor, while we are getting the lights on, I couldn't help but notice that I'm accustomed to seeing a little more animation in things like this. This didn't look like something that I would find interesting.
A. Well, I mean, this film was widely viewed in the mid1960s. There was a lot of celebration of it here in New Orleans. It was reported on several times in the newspaper. It won -- it was nominated for an Academy Award for animation. It won awards as an outstanding short film at that time.
It's different from what we see in terms of cartoons today, but it was considered a very effective and widely viewed and really kind of celebrated short film.
Q. Would that be an example of why I should be concerned about hindsight? Because viewing it today, we might think it's not up-to-date, but back then it was different?
A. I think so, yes. I think you would have to watch this cartoon in the context of all the cartoons that appeared at that time or up until that time.
But for its time, it was viewed as a very effective piece of public health information.
Q. Now, sir, you mentioned that you looked at Massachusetts educational materials where another class rep grew up. Did the State of Massachusetts also require information about health risks of

smoking be taught in schools?
A. Yes.
Q. And Professor, before we take a break for lunch, were there other influential people in the United States early in this part of the century or earlier, the last century, who also spoke out against cigarettes?
A. Yes. There were lots in the 1900s and especially early 1900s, there were lots of Americans who supported the anticigarette movement, and lots of well known famous people.
Like the car maker Henry Ford who said he wouldn't hire cigarette smokers.
Or the inventer Thomas Edison who was involved in antismoking efforts also had the same kind of anticigarette viewpoint.
Or the educator Booker Washington who condemned cigarette smoking as something that undermined the health of all people. He was particularly concerned with African-Americans.
And that's just three. There were lots of other Americans who believed that it was a public health hazard, and some very well known people made it their effort to campaign against it.
Q. Refresh my memory. Henry Ford and the Ford plants, about what decade was that?
A. Well, he began mass producing automobiles in the 19-teens, and he had, you know, hundreds of thousands of people working for him.

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Q. So you are saying as early as around the 1920s, there were places in this country you couldn't even get a job if you smoked?

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A. That's right.
Q. And that was because people knew the risks of smoking?
A. Yes.

MR. SHOLES:
Your Honor, with the Court's permission, I'm about to move to a new area. This might be a good time to take a break for lunch.

THE COURT:
We will have a luncheon recess from now until 1:30. You are discharged now until 1:30.
(In open court without a jury present:)

THE COURT:
Let the record reflect that the jury has left the courtroom. Anything for the record by plaintiffs counsel?

MR. MURRAY:
No.

MR. RUSS HERMAN:
Yes, I do. But I want to make sure that the jurors are well out of range.
Yesterday Dr. Viscusi testified at page 18733, Mr. Muehlberger on redirect:
Question: And in fact because the first, the 1985 survey was funded by law firms, you went ahead and did your own survey without telling anybody to verify the accuracy of that survey; right?
Answer: Right. Not only did I not

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tell them, they didn't give me any money for it or anything else.
We signed a stipulation which prevented us from inquiring as to how much he made from tobacco companies.
I have at least six depositions in which Dr. Viscusi testified that he has made at least six hundred thousand dollars in connection with his tobacco company activities.
I will be happy to produce the cogent testimony as soon as I get back from lunch.
Law firms that were in those depositions are also represented here.
We want to give anyone who thinks that they should the opportunity to correct this record, because we believe the testimony is perjured and we believe that it was well known to the defendants.
It was nonresponsive to the question asked, and either the witness had to have planned it in advance, or something else must have happened.
We think that by having entered the stipulation -- and I wanted to check the

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record carefully today -- this witness attempted to give this jury an impression that he wasn't paid at all.

It was false, it was misleading, and it certainly isn't the testimony in his depositions.

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I bring that to the Court's attention now.

MR. WITTMANN:

He testified clearly he was paid by the tobacco company lawyers.

MR. RUSS HERMAN:

Excuse me, Mr. Wittmann. If you read -- I am giving you advanced notice. Please read page 18733 of his testimony.

MR. WITTMANN:

I will look at the testimony, Your Honor. I will be happy to argue it.

THE COURT:

Anything else for the record by plaintiffs counsel?

MR. RUSS HERMAN:

No, sir.

THE COURT:

Defense counsel, anything for the record?

MR. WITTMANN:

No, Your Honor.

MR. SHOLES:

Only one point, Your Honor.

The Court has taken the position that we are not allowed to discuss with Dr. Norell any plaintiffs specific materials.

We would like to, as has been in the past, we would like to submit a proffer of the questions we would have asked in those areas.

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THE COURT:

We will deal with that later on in the day.

Anything else by defense counsel?

MR. LONG:

One more comment, Your Honor. It appears to me at least Juror No. 1 and Juror No. 10 continue to nod off during the testimony, sleep.

THE COURT:

I will watch them closely this afternoon.

We will recess until 1:30.

(Whereupon, the hearing recesses at 12:00 noon.)

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REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

_____

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